

July 20, 2010

To: Members-Environmental Quality Council

Re: Petroleum Tank Release Compensation Fund Oversight
DEQ RBCA Rules – Mixing Zone Bill Draft

Mr. Chairman and members of the EQC;

Please accept this correspondence in regards to the Council's upcoming meeting on July 23rd and the ongoing oversight of the "Petro" Fund. A national conference is keeping me away from the meeting however, the Association will be represented by legal counsel, Mr. Lee Bruner.

There are two issues pending before the Council that the Association has been providing information for. We would like to be on record with the following comments:

First, the proposed DEQ "RBCA " rules that the industry expressed concerns about have, as the Counsel may know, been adopted as written by the Department. In referencing the minutes from the last Council meeting and the communication issues between the industry and the remediation division, be advised that we did finally receive a written response from the Department in answer to our formal written comments of opposition dated 2/10/2010. While we are reasonably satisfied that two of the concerns have been addressed, we remain opposed to certain parts of the rule adoption.

One is the Departments model for determining risk based soil screening levels based on "estimated statewide conditions". The industry is opposed to the model as it is not based on "estimated statewide conditions" but rather based on the most conservative geologic and hydrologic model parameters considered for the northwest part of the State. As you are aware the eastern part of the State has significantly different weather, topography, and geology than northwestern Montana and therefore these parameters vary widely across the State. The Department admits in their comments that they did not average the estimated data of five other areas to come up with, "representative statewide conditions". This results in a large number of sites unnecessarily falling under the strictest release closure criteria, thereby causing increased costs to the Fund. The Department states that an owner/operator may (with Department approval) use parameters tailored to specific site conditions to evaluate risks at contested sites. We would have to dispute that the use of specific site conditions occurs with any success. In our meeting with the Department in June we requested a list of sites where "specific site conditions" were considered and approved; to date we have not received such a list. Further in researching this we are aware of several situations where owners/operators have indeed attempted to use site specific conditions to achieve closure and have not been granted approval by the Department.

We also continue to oppose the inclusion of vapor intrusion in the evaluation of petroleum contaminated sites. We still believe the Department is getting ahead of itself in establishing a requirement for vapor testing that is based on a 2002 EPA guidance document for evaluating vapor

intrusion to indoor pathways from groundwater and soils. The guidance specifically stated that it was not recommended for use at underground tank sites because of certain conservative assumptions designed to address chlorinated solvents that may not be appropriate at most petroleum release sites (for a variety of reasons.) Since then the EPA has established a work group of many different stakeholders to gather information associated with petroleum vapor intrusion and develop a rationale for an appropriate approach to sites with petroleum contamination. They expect to have results of the workgroup findings sometime in 2012. We cannot understand why the Department desires to establish such guidance at this time rather than await the finding from the EPA workgroup. Therefore we continue to oppose the use of this guidance at petroleum release sites. Once again we thank the Council for reviewing the rule package.

The second issue before the Council is the "mixing zone" concept that was presented at the last meeting. This is a concept recommended by a member of the petroleum Board during fund solvency workgroup discussions. We believe this concept, if implemented, will assist in the solvency of the Fund, increase site closures and enhance property transfers and redevelopment. You have received a bill draft that we believe to be a good first step in establishing risk based closure procedures for petroleum contaminated sites. The Department has formed a stakeholders group to assess whether the concept can be advanced through rule-making which is a positive step. However, it is quite unlikely that this will be completed prior to the Session.

The proposed legislation gives both industry and the Department a clear framework and guidance to implement mixing zones in Montana. The mixing zone concept has been in Montana law for a number of years, but has failed to be utilized for underground storage tank cleanup. We feel that clear guidance from the Legislature stating that mixing zones are an appropriate and necessary component of petroleum cleanup, is necessary to timely implement this. The cost savings to owners and to the MT Petroleum Tank Release Cleanup Fund would be very significant.

We very much appreciate the Council's consideration and encourage support of legislative action.

Thank you for the opportunity to submit our comments.

Sincerely;

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